

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION**

**ALLAN D. SCHUBERT, #30850-064**

**PLAINTIFF**

**vs.**

**CIVIL ACTION No.: 3:22-CV-321-HTW-LGI**

**KRYSTAL AVERY, correctional officer**

**DEFENDANT**

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**ORDER ADOPTING REPORT AND RECOMMENDATION**

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BEFORE THIS COURT is the Report and Recommendation [**Docket no. 32**] issued by Magistrate Judge LaKeysha Greer Isaac. In her Report and Recommendation, filed on June 26, 2023, Magistrate Judge Isaac recommended that Defendant Krystal Avery's Motion to Dismiss [**Docket no. 27**] be converted to a Motion for Summary Judgment and GRANTED. The Magistrate Judge further recommended that pro se Plaintiff Allen Schubert's claims against Defendant Avery be dismissed without prejudice for failure to exhaust administrative remedies.

The Magistrate Judge directed Plaintiff to file any objections within fourteen (14) days. Plaintiff alleges that he did not receive Magistrate Judge Isaac's Report and Recommendation until July 20, 2023; therefore, he filed his objections on July 28, 2023 [**Docket no. 34**]<sup>1</sup>. Plaintiff states that he "objects to the Report and Recommendation by the Magistrate, and not being able to contest its contents" *Id.* at ¶6. He asserts that he "is still without his property to properly contest the exhaustion issue, which is the basis of Defendant's Answer and the Magistrate Judge's Report and

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<sup>1</sup> This court notes that on June 29, 2023, after the Magistrate Judge issued her Report and Recommendation, Plaintiff requested an extension of time to respond to Defendant's Motion to Dismiss. This court, in lockstep with the Magistrate Judge's report, finds that the appropriate time for filing a response has long passed. Plaintiff's Motion [**Docket no. 33**], therefore is dismissed as MOOT at this juncture.

Recommendations.” *Id.* at ¶ 7. Plaintiff provides no further explanation for his failure to exhaust the requisite administrative remedies.

This court, having considered Plaintiff’s objections thereto, finds Magistrate Judge Isaac’s Report and Recommendation [Docket no. 32] to be well-taken. The Magistrate Judge carefully examined the pleadings, identified the operative issues and cogent facts, and crafted a well-versed Report and Recommendation which illustrates Plaintiff’s failure to exhaust his administrative remedies. This court, therefore, ADOPTS the Report and Recommendation of the Magistrate Judge as order of this court.

ACCORDINGLY, IT IS HEREBY ORDERED THAT, based upon the reasons listed in the Magistrate Judge’s Report and Recommendation, Defendant’s Motion to **Dismiss [Docket no. 27]**, converted to a Motion for Summary Judgment, hereby is **GRANTED**.

This action hereby is **DISMISSED WITHOUT PREJUDICE** for failure to exhaust administrative remedies.

**SO ORDERED this the 8th day of December, 2023.**

/s/HENRY T. WINGATE  
**UNITED STATES DISTRICT COURT JUDGE**